

112 FERC ¶ 61,039
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suede G. Kelly.

Enbridge Pipelines (KPC)

Docket Nos. RP04-6-000,
RP04-6-001, and RP04-6-002

ORDER FOLLOWING TECHNICAL CONFERENCE

(Issued July 6, 2005)

1. As directed by the Commission, a technical conference was convened on March 24, 2005, to address the negative deferred fuel account balance and surplus gas on the system of Enbridge Pipelines (KPC) (hereinafter KPC). Following the technical conference, KPC filed initial comments and the Kansas Corporation Commission (KCC) filed reply comments. As discussed below, the Commission finds that the over-recovery resulted from various causes including an accounting error and a difference in fuel adjustment timing on another pipeline's capacity which KPC leases. An out-of-cycle fuel adjustment and corrective filing KPC made in Docket No. RP05-298-000, and KPC's awareness of the causes of these anomalies, should prevent them from recurring in the future. Therefore, the Commission terminates these proceedings examining the revised tariff sheets constituting the October 1, 2003 filing, as amended October 20, 2003, are terminated. In conjunction with the changes approved in Docket No. RP05-298-000, which arose from the technical conference in this proceeding, this order benefits the public by correcting for, and minimizing the likelihood of, an anomalous accrual of "surplus" gas on KPC's system.

Background

2. On October 1, 2003, KPC submitted revised tariff sheets, in accordance with section 23 of its General Terms and Conditions (GT&C), adjusting its fuel reimbursement percentages (FRPs) to reflect changes in its fuel usage and L&U gas. The revised tariff sheets proposed, among other things, a decrease in the FRPs. By letter order issued October 31, 2003, the Director of the Office of Market Tariffs and Rates (OMTR) accepted the filing, as amended October 20, 2003 to reflect a pagination correction, effective November 1, 2003.

3. On December 1, 2003, the KCC requested rehearing of the letter order arguing that the filing should not have been accepted because of KCC's concern about KPC's large negative deferred fuel account balance reflecting surplus gas on the pipeline's system. KCC argued that a chronic incorrect estimate of L&U gas was the most probable cause of the negative balances and that, as a result of failing to use realistic estimates of fuel and L&U gas in computing the fuel retainage percentage, KPC over-recovered actual fuel quantities used and L&U gas. KCC believed this practice allowed KPC to reap a windfall in the form of the time value of money. KCC argued the Commission should not permit KPC to continue to retain the negative balance in the deferred fuel account without requiring interest to accrue to the benefit of ratepayers.¹

4. Because KCC's request for rehearing raised issues that the Commission had not previously addressed and to assist in completing an analysis of the issues, on August 27, 2004, the OMTR Director sent a formal data request to KPC.² On October 27, 2004, KPC submitted its answers to the data request.³ On November 5, 2004, KCC filed a petition requesting the Commission to compel KPC to provide more responsive answers.⁴ On November 22, 2004, KPC filed an answer opposing the petition to compel responses.

¹ Further, KCC argued that KPC's proposed use of a 0% fuel retainage percentage was unlikely to rectify or eliminate the negative balance in KPC's deferred fuel account balance during the next twelve-month period. KCC wanted the Commission to order KPC to (1) refund directly to shippers the negative balance in KPC's deferred fuel account; and (2) establish reasonable fuel retainage estimates for use going forward.

² The data request asked (a) whether the negative balances in the deferred fuel account represents surplus gas to KPC's system; (b) if so, how KPC manages this negative balance; (c) whether KPC receives any financial benefits as a result of this surplus gas; (d) if there are such benefits, are these benefits shared with or passed through to KPC's shippers; and (e) whether this surplus gas benefits or harms the operation of the pipeline. The second concern was whether the source of the surplus gas is primarily due to L&U gas on the system (KCC stated that, while L&U gas typically results in less available gas in pipelines, on KPC in many months, it is shown as an addition to its system supply) and (a) whether KPC has undertaken any analysis to determine the source of this surplus gas supply; (b) if so, what are the results of the analysis; and (c) what, if any corrective action, does KPC propose to eliminate or reduce this imbalance.

³ See *Enbridge Pipeline (KPC)*, 109 FERC ¶ 61,346 at P 9 for a detailed description of KPC's response to the data request.

⁴ See *id.* at P 10-11 for a detail of the arguments KCC raised in its petition.

5. By order issued December 22, 2004,⁵ the Commission granted rehearing in part of the October 31, 2003 Order so that further procedures could be established to address the issues raised by KCC. The Commission found that KPC's responses to the data request did not provide sufficient information to resolve the issues. The Commission stated that, for example, KPC had not given a sufficient explanation of how it manages its surplus gas through Operational Balancing Agreements (OBAs) and Pre-determined Allocations (PDAs) in order to determine whether the pipeline benefits financially from the surplus gas. Therefore, to get the information necessary to resolve the issues in this case, the Commission directed its staff to convene a technical conference.

6. A technical conference was initially scheduled for January 26, 2005. However, on January 21, 2005, KPC moved for a postponement of the technical conference, which was unopposed. The Commission then issued a notice rescheduling the conference for March 24, 2005. The technical conference was held on that date. On April 29, 2005, KPC filed initial comments and on May 18, 2005, KCC filed reply comments.

Discussion

A. KPC's Corrective Proposal

7. KPC has acknowledged the factors it discovered that contributed to the over-recovery problem on its system. The largest factors were (1) the misaccounting by KPC of the amount of fuel it needed to deliver to Transok L.L.C. (Transok) as part of its lease of Transok capacity (2) and the fact that Transok and KPC's fuel adjustments were on different time schedules. As a result of these factors, KPC was recovering more fuel gas than it needed. Based upon these factors and the discussion at the technical conference, KPC made a filing in Docket No. RP05-298-000, contemporaneously with its comments on the technical conference, in which KPC sought permission to make an out-of-cycle fuel tracker filing and to change the effective date of KPC's annual fuel reimbursement adjustment to April 1 rather than November 1.⁶ The purpose of the corrective out-of-cycle filing was to have adjusted rates, as well as a revised fuel mechanism, in place so

⁵ *Enbridge Pipelines (KPC)*, 109 FERC ¶ 61,346 (2004)

⁶ On May 31, 2005, the Commission accepted the corrective out-of-cycle fuel tracker filing in Docket No. RP05-298-000, subject to the outcome of the instant proceeding. *Enbridge Pipelines (KPC)*, 111 FERC ¶ 61,297 (2005). In that case, KCC did not object to the Commission permitting the filing to go into effect as proposed. KCC stated that the filing does not appear to present an increased risk of a large negative deferred fuel account balance previously identified in the instant proceeding. Rather, KCC contended that, to some degree, the out-of-cycle proposal may reduce the likelihood of such a recurrence in the future.

that the accumulating over-recovery due to the KPC/Transok lease can be eliminated.⁷ The corrective filing should help to keep KPC's fuel tracker balance as close to zero as possible.

8. While KCC has concerns about the adequacy of KPC's explanation concerning the basis for the pattern of surplus gas on KPC's system, KCC supports the measures KPC proposed in the corrective out-of-cycle filing in Docket No. RP05-298-000. KCC states that it supports the objectives in the corrective filing, even though it is unable to determine whether the proposed measures will accomplish the desired result. KCC believes that KPC's good faith attempt to address a systemic problem should be given an opportunity to work. KCC states that, if further adjustments prove to be needed after a trial period, the Commission should require KPC to address any remaining deficiencies in its fuel tracker filing. For the present, KCC is satisfied that KPC has taken steps to address the various concerns it raised in this proceeding about the over-recovery of fuel on KPC's system.

9. Based upon our review of the initial and reply comments, the Commission finds that there was no "windfall" of surplus gas on KPC's system. Rather, the problem in this proceeding was chiefly the result of accounting and timing errors which caused KPC to erroneously project its fuel needs, and to reflect certain volumes as over recovered volumes. We find, however, there was no intentional unjust and unreasonable over-recovery of gas volumes on KPC's system. While it is true that had the accounting, timing and other errors not occurred, there may have been less fuel gas recovered from shippers, none of this gas was retained or disposed of by KPC and KPC realized no financial gain therefrom. Rather, the so-called "surplus" gas was allocated throughout the system, either to KPC's shippers or to OBAs that KPC has with its various interconnecting pipelines. The Commission has already approved KPC's corrective filing in Docket No. RP05-298-000 which should go a long way to prevent these problems from recurring in the future and make future fuel adjustments more accurate. The Commission agrees with KCC that KPC has made a good faith effort to address these issues and will look to future fuel adjustment filings to assess whether these issues have been satisfactorily resolved.

B. Whether to Refund or Make Statement Precluding Future Adjustments

10. KCC states that KPC has yet to explain clearly the basis for the pattern of surplus gas on KPC's system but KPC has at least addressed (1) the calculation error related to

⁷ KPC leases capacity on a section of the Transok system. Prior to KPC's corrective filing in Docket No. RP05-298-000, the differing dates of the fuel adjustments on Transok and KPC made it difficult for KPC to accurately project its fuel usage for the coming year.

the Transok lease; (2) the rate differential between Zone 1 and Transok leased capacity as they relate to offsystem lease volumes; (3) the lack of coordination in the timing of KPC's fuel tracker filings with those of Transok and (4) the likely causes for the over-recovery in Zone 3. KCC contends that the explanations fall somewhat short of the definitive answer, but KCC believes that the explanations given are most likely the best that KPC can provide due to changes KPC experienced in corporate ownership and management. KCC acknowledges that, in all probability, KPC lacks the institutional memory that would enable the pipeline to provide definitive answers, and accepts KPC's explanation of the causes for the recurrence of surplus gas on the KPC system as the best explanation likely to be received.

11. KCC states that, based on KPC's explanations of how the surplus gas in KPC's system was returned to shippers through OBAs and PDAs, the KCC is satisfied that KPC did not reap a windfall from the surplus gas on its system during the period of time at issue. KCC asserts that, under the circumstances, and given the small dollar amounts involved, it is willing to accept, what it terms, the "rough justice" proposed by KPC's reliance on OBAs and PDAs, provided that adequate steps are taken (which it states KCC acknowledges to be the case) to minimize the potential for the problem recurring in the future. Nevertheless, KCC states that the largest cause for the accrual of surplus gas in Zone 1 was attributable to an admitted error, which was within KPC's control.⁸ In light of this, KCC asks the Commission to require KPC to calculate interest on the difference between the retained fuel and L&U gas in 2003 and the actual fuel and L&U gas and returning this interest to KPC's shippers in proportion to the quantity shipped as a reasonable remedy for KPC's error. We do not find the circumstances warrant this remedy.

12. In the first place, some of the volumes that appeared to be a surplus fuel recovery were actually used as part of the Transok lease. KPC did not reap a windfall from such surplus gas during the period of time at issue. Nor did it realize any financial gain from fuel gas that actually was surplus to its needs. KPC's tariff governing fuel adjustments does not provide for KPC to calculate interest on the time value of money. KPC's fuel tracker, like all fuel trackers, will sometimes over- or under- recover fuel. In essence, what KCC is asking the Commission to do is to take action under section 5 of the Natural Gas Act (NGA) in order to provide a remedy for the mere operation of an approved tariff mechanism and certain errors in its application. We do not find that the accounting errors in this case rise to the level of negligence requiring this remedy. The Commission therefore declines to take NGA section 5 action in the instant proceeding to order the refunds requested.

⁸ Certain payments by KPC of fuel gas to Transok in conjunction with KPC's leased capacity on Transok were not recorded properly, as actual fuel gas used. As a result these amounts appeared as over-recovered volumes on KPC.

13. Second, KCC asks the Commission to declare that in the instant or any subsequent proceeding KPC should not be permitted to recover the actual fuel and L&U gas “paid” by KPC to Transok in a prior period that was erroneously omitted from KPC’s calculations of its past fuel and L&U tracker filings. Asserting that KPC’s tariff precludes out-of-cycle recovery of such costs, KCC requests that the Commission expressly affirm that such costs may not be recovered by KPC.

14. The Commission cannot affirm that KPC may never recover in any future filing the costs related to the actual fuel usage and L&U gas that was erroneously omitted from KPC’s calculation of its past fuel use and L&U gas tracker filings. Until such a filing is made by KPC, it is not ripe for decision. If made, it will be addressed based on all relevant factors, including interpretation of the tariff. The use of an adjustment to correct a past error that results in over- or under-recovery of fuel use is consistent with Commission precedent.⁹ KPC has effectively done this in conjunction with its corrective filing in Docket No. RP05-298-000. In this case, the Commission finds that the circumstances warrant neither a refund requirement, nor an absolute bar on future corrections.

The Commission orders:

These proceedings examining the revised tariff sheets constituting the October 1, 2003 filing are terminated.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

⁹ See *Northern Natural Gas Company*, 110 FERC ¶ 61,253 (2005) and *TransColorado Gas Transmission Co.*, 111 FERC ¶ 61,208 (2005).